IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 310 OF 2007
IN
FAMILY COURT APPEAL (STAMP) NO. 25981 OF 2007

Jharna Yogesh Mehta ...Applicant
V/s.
Yogesh Anartrai Mehta ...Respondent

Mr.A. Saheed i/b. Mr.Vivek Kantawala & Co. for the Applicant.
Mr.V.S. Kapse for the Respondent.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATED : DECEMBER 5, 2007

P.C. :-

1. This Civil Application is taken out for condonation of delay in filing the appeal.

2. A petition was filed by the husband Yogesh for divorce. The applicant-appellant wife, it appears, did not file written statement, therefore, decree was passed under Order 8 Rule 10 of CPC on 7th July, 2006 dissolving the marriage. For setting aside that decree, an application was filed before the trial Court which is registered as Civil Misc.Application No.112/2006. That application was made in the month of September, 2006.

That application has been rejected on 11th June, 1007. As the decree was passed under Order 8 Rule 10 of CPC, obviously, the application was not maintainable. After that application was rejected, appeal has been filed.

3. An application for condonation of delay has been taken out. The period that was spent in prosecuting the application filed under Order 9, in our opinion, will have to be excluded and if that period is excluded, there is not much delay involved in filing this appeal. In any case, considering that the decree challenged in the appeal is for dissolution of marriage, in our opinion, it would be in the interest of justice to condone the delay.

4. The Civil Application is, therefore, granted in terms of prayer clause (a). Civil Application is disposed of.

5. Office to register the Appeal. Place the appeal for admission on 17th December, 2007.

(D.K. vDESHMUKH, J.)

(V.M. KANADE, J.)